

March 18, 2011

Richard Krumwiede, Director  
225 North Oneida Street  
Appleton, WI 54911

Dear Rick,

This letter is response to your request for an opinion on whether a Wisconsin public library's participation in the Overdrive Advantage Program would be consistent with the provision of Section 43.15(4)(c)4, *Wisconsin Statutes*, that requires public libraries "...to provide, to any resident of the system area, the same library services, on the same terms, that are provided to the residents of the municipality or county that established the member library."

In our opinion, the current statutes do not allow for an exception to the "same services" requirement for the Overdrive Advantage Program. The same services requirement is fundamental to the purposes of the system aid program in that one of the program's major goals is to equalize access to public library services for Wisconsin residents, at least throughout the system area.

We do not believe the s. 43.15(4)(c)4 "database" use restrictions can be stretched to include e-books. Using a licensed commercial database to search for information is fundamentally different from using Overdrive to check out an e-book.

In addition, when the legislature passed laws requiring counties to reimburse public libraries for non residents use, they directed that all public library operating expenditures, with the exception of those expenditures from federal funds, be included in the reimbursement formula calculation. We do not believe the legislature would have directed counties to reimburse public libraries for the cost of services that were being denied to some of their county's residents, except in very unusual situations.

Some argue that the Overdrive Advantage program is legally allowable under the Wisconsin Attorney General opinion that allows library rental collections so long as a reasonable number of free copies are made available by the library. We do not agree. While there are some similarities between these two issues, the fundamental difference is that the Attorney General opinion on rental collections was an interpretation of s. 43.52(2) (the "free library service" statute), while the current matter involves an entirely different statute with different purposes and consequences. Even aside from that, those rental collections would be available to all system residents, whereas the Advantage program is limited to the library's own registered borrowers.

We recognize; however, that e-books and other downloadable content represent new and significant challenges for all libraries. Current practices and possibly even current laws may need to be changed to reflect this new reality. For this reason, we are sponsoring an e-book

summit on May 4 to develop a Wisconsin strategy for approaching a number of e-book issues, including the “same services” issue as it applies to e-books. It is our hope that the summit will lead to a statewide solution to the “same services” issue and other e-book issues.

For the time being, we will not be requiring, nor will we allow, library systems to penalize member libraries for participation in the Overdrive Advantage Program. At the same time, DLTCL neither encourages nor condones individual libraries from contracting with Overdrive or other e-content vendors for virtual materials that will not be available to their entire system area. This DLTCL position will be re-evaluated after the e-book summit and the summit follow-up activities.

Please contact me if you have any questions.

Sincerely,

Michael Cross  
Director of Public Library development